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ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON, DC 20005

EXAMINER

FORD, GRANT M

ART UNIT	PAPER NUMBER
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2442

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/098,620	Applicant(s) ROSENBERG ET AL.	
	Examiner GRANT FORD	Art Unit 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 and 32-48 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/24/09, 10/29/09, 11/2/09</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims and 1-4,6-10,16-21,23-26,29-30,32-35,36-39,41-45,and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke et al. (6,587,127), hereinafter referred to as Leeke in view of Ward (6,526,411), further in view of Herz et al. (6,020,883), hereinafter referred to as Herz, and further in view of De Bonet et al. (6,985,694).

a. As per claims 1, 18, and 36, Leeke discloses a method and system comprising the steps of:

receiving an indication from a user of a receiver tuned to a broadcast channel that the user likes a broadcast recording (Col 13 line 63 through Col 14 line 11, Col. 35 lines 48-59). However, Leeke fails to explicitly teach the use of dynamic playlists associated with personalized channel profiles.

Ward teaches storing one or more channel profiles (Figure 2 element 18) and associating each of the one or more channel profiles with a personalized, wherein the channel profile associated with a personalized channel is used to select the

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recordings that are played for the personalized channel (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20 through 40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

Herz teaches transmitting a broadcast recording over a broadcast channel, wherein the step of transmitting the broadcast recording over the broadcast channel comprises transmitting the broadcast recording to a plurality of unspecified receivers simultaneously (Col. 4 lines 35-61), and modifying at least one of the one or more channel profiles in response to receiving user feedback regarding a broadcast recording (Col. 4 line 62 through Col. 5 line 25, Col. 6 lines 38-57, Col 11 lines 1-32 and Col. 22 lines 54-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of broadcasting a recording to multiple unspecified receivers and modifying at least one of the channel profiles based on receiving user feedback regarding the broadcast recording with the prior art of Leeke. One of ordinary skill in the art would have done so for the purpose of establishing personalized virtual stations based on scheduled broadcast data and profile data (Abstract, Col 4 lines 35-43)

De Bonet teaches receiving an indication from the user that the user likes the received broadcast recording while the broadcast recording is being transmitted

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over the broadcast channel (Col 2 lines 18-21, Col 8 lines 24-26 and 37-40, Col 13 lines 50-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of receiving user feedback regarding a currently playing broadcast recording with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of receiving timely user ratings of currently playing songs for use in collaborative filtering used to predict other songs which the particular user might enjoy (Col 13 lines 21-38 and 50-59).

b. As per claims 2,19, and 37, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. However, Leeke fails to explicitly teach modifying the audio channel profiles.

Ward teaches wherein said at least one of the one or more profiles includes a set of one or more recording identifiers, and the step of modifying said at least one of the one or more channel profiles comprises the step of adding a recording identifier that identifies the received broadcast recording to said set of recording identifiers included in the at least one profile (Col 2 lines 18-25, Col 2 lines 46-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of modifying channel profiles with the broadcast system of Leeke. One of ordinary skill in the art would have done so for the purpose of defining relationships between a user's preference towards a respective content item and dynamically modifying a playlist accordingly (Col 2 lines 54-60).

c. As per claims 3,20, and 38, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. However, Leeke fails to explicitly teach modifying channel profiles with artist identifiers.

Ward teaches wherein said at least one of the one or more profiles includes a set of one or more artist identifiers, and the step of modifying at least one of the one or more channel profiles comprises the step of adding an artist identifier that identifies the artist that recorded a recording to said set of artist identifiers included in the at least one profile (Col 4 lines 52-58). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of modifying channel profiles with the broadcast system of Leeke. One of ordinary skill in the art would have done so for the purpose of defining relationships between a user's preference towards a respective content item and dynamically modifying a playlist accordingly (Col 2 lines 54-60).

d. As per claims 4,21, and 39, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. Leeke additionally discloses the step of enabling the user to specify the degree to which the user likes the recording (Col 35 lines 48-50).

e. As per claims 6,23, and 41, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. Leeke additionally discloses the step of obtaining information about the transmitted broadcast sound recording (Table III, Col 44 lines 48-65).

f. As per claims 7,24, and 42, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. However, Leeke fails to explicitly teach modifying channel profiles based on received information concerning the received recording.

Ward teaches selecting one or more of the channel profiles based on the obtained information concerning the broadcast recording (Col 2 lines 18-25 and 46-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of selecting one or more profiles in response to feedback associated with a received recording with the broadcast system of Leeke. One of ordinary skill in the art would have been done so for the purpose of updating meta-data for users who indicate feedback regarding a received recording (Col 2 lines 46-53).

Herz teaches wherein the step of modifying at least one of the one or more channel profiles comprises the step of modifying at least one of the selected profiles (Col. 6 lines 48-57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of modifying one or more selected profiles responsive to positive feedback with the prior art of Leeke. One of ordinary skill in the art would have done so for the purpose of updating content and customer profile data based upon customer preferences for content parameters (Col. 6 lines 38-57).

g. As per claims 8,25, and 43, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. Leeke additionally discloses

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wherein the information concerning the sound recording indicates a genre to which the recording belongs (Col 19 lines 66-67, Col 20 lines 1-11).

h. As per claims 9,26, and 44, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. Leeke additionally discloses the step of storing the broadcast recording in a cache of the receiver as the broadcast recording is being received (Col. 35 lines 48-59, Col 48 lines 38-47, Col 49 lines 12-21).

i. As per claims 10 and 45, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. Leeke additionally discloses providing a means for enabling the user to provide an indication that the user would like to obtain a copy of the broadcast recording (Col 14 lines 40-42).

j. As per claims 16 and 29, Leeke discloses retrieving a selected recording (Col 35 lines 16-19);

transmitting the selected recording so that the user can listen to the recording (Col 35 line 48);

receiving a broadcast recording so that a user can listen to the broadcast recording (Col 35 lines 16-19);

enabling the user to indicate that the user likes or does not like the broadcast recording (Col 35 lines 48-50). However, Leeke fails to explicitly teach selecting, in response to the received indication, a recording specified in the playlist or modifying at least one of the one or more profiles in response to the user indicating that the user likes or does not like the broadcast recording.

Ward teaches using the information in one of the profiles to create a playlist, wherein the playlist specifies a set of recordings (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40);

associating the playlist with the personalized audio channel that is associated with the profile used to create the playlist (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40);

selecting, in response to the received indication, a recording specified in the playlist (Col 2 lines 18-25 and 46-60); and

receiving from the user an indication that the user desires to listen to the personalized audio channel (Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of personalized audio channel profiles with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of defining relationships between a user's preference towards a respective content item and dynamically modifying a playlist accordingly (Col 2 lines 54-60).

Herz teaches transmitting a broadcast recording over a broadcast channel, wherein the step of transmitting the broadcast recording over the broadcast channel comprises transmitting the broadcast recording to a plurality of unspecified receivers simultaneously (Col. 4 lines 35-61), and modifying at least one of the one or more channel profiles in response to receiving user feedback regarding a broadcast recording (Col. 6 lines 38-57, Col 11 lines 1-32). It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to incorporate the use of broadcasting a recording to multiple unspecified receivers and modifying at least one of the channel profiles based on receiving user feedback regarding the broadcast recording with the prior art of Leeke. One of ordinary skill in the art would have done so for the purpose of establishing personalized virtual stations based on scheduled broadcast data (Abstract, Col 4 lines 35-43)

De Bonet teaches receiving an indication from the user that the user likes the received broadcast recording while the broadcast recording is being transmitted over the broadcast channel (Col 2 lines 18-21, Col 8 lines 24-26 and 37-40, Col 13 lines 50-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of receiving user feedback regarding a currently playing broadcast recording with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of receiving timely user ratings of currently playing songs for use in collaborative filtering used to predict other songs which the particular user might enjoy (Col 13 lines 21-38 and 50-59).

k. As per claims 17 and 30, Leeke additionally discloses the step of storing the broadcast recording in a cache as the broadcast recording is being received (Col 48 lines 38-47, Col 49 lines 12-21).

l. As per claim 32, Leeke additionally discloses enabling a user to create a new channel profile without requiring the user to input any user identifier (Col 6 lines 29-36).

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m. As per claim 33, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. However, Leeke fails to explicitly disclose creating first and second channel profiles with separate music artists, songs, and/or genre of music.

Ward teaches enabling a user to create a first channel profile that specifies at least one artist, song and/or genre of music and a second channel profile that specifies at least one artist, song, and/or genre of music, wherein the second channel profile specifies at least one artist, song, and/or genre of music that is not specified in the first audio profile (Col 3 lines 21-30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of separate music profiles between users with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of providing a profile based off of a seed (Col 3 lines 21-30).

n. As per claim 34, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. However, Leeke fails to explicitly teach the use of a personalized channel being used to select all recordings that are played for the personalized channel.

Ward teaches wherein the channel profile associated with a personalized channel is used to select all of the sound recordings that are played for the personalized channel (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use

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of dynamic profiles and playlists with the broadcast system of Leeke. One of ordinary skill in the art would have done so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

o. As per claim 35, Leeke, Ward, Herz, and De Bonet teach the invention substantially as claimed above. However, Leeke fails to explicitly teach creating a playlist based upon information contained in one of the channel profiles.

Ward teaches creating a playlist based upon information contained in one of the channel profiles (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

p. As per claim 47, Leeke additionally discloses wherein the one or more channel profiles are audio channel profiles (Col 13 line 61 through Col 14 line 5).

q. As per claim 48, Leeke additionally discloses wherein the broadcast recording is a broadcast sound recording (Col. 13 line 61 through Col. 14 line 30, Col. 17 lines 47-65, Col. 48 lines 55-67, Col. 50 lines 18-28).

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3. Claims 5,22, and 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke, Ward, Herz, and De Bonet in view of Ellis et al. (US 7,185,355), hereinafter referred to as Ellis.

a. As per claims 5,22, and 40, Leeke fails to explicitly disclose modification of a selected profile or profiles. Ward teaches modifying a selected profile or profiles (Col 8 lines 20-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast system of Leeke. One of ordinary skill in the art would have been motivated to do so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

Ellis teaches prompting a user to select at least one profile in response to receiving an indication (Figure 12, Col. 10 lines 18-39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of selecting a profile to modify with network based broadcast distribution systems. One of ordinary skill in the art would have done so for the purpose of permitting a system in which multiple profiles are used at the same time, and in which a user may dynamically change content preference indications and link them to a specific profile (Col. 9 line 63 through Col. 10 line 39).

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4. Claims 11 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke, Ward, Herz, and De Bonet in view of Mankovich et al. (2003/0097338) hereinafter referred to as Mankovich.

a. As per claims 11 and 46 Leeke teaches determining whether the user may obtain a copy of the broadcast recording in response to the user providing an indication that the user would like to obtain a copy of the broadcast recording (Col 23 lines 60-66, Col. 24 lines 15-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of a purchase option with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing a user to possess a legal copy of a selected broadcast recording (Col 14 lines 40-44).

Mankovich teaches copying a sound recording from a cache to a non-volatile storage medium if it is determined that the user may obtain a copy (Para. 0030). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of transition from a cache to a non-volatile storage medium with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing download of digital copies of content upon purchase request (Para. 0030).

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5. Claims 12-14 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke, Ward, Herz, and De Bonet in view of *What is LAUNCHcast?* (hereinafter referred to as Launchcast).

a. As per claims 12 and 27, Leeke discloses receiving an indication from a user of a receiver tuned to a broadcast channel that the user likes a broadcast recording (Col 13 line 63 through Col 14 line 11, Col. 35 lines 48-59). However, Leeke fails to explicitly teach modifying personalized profiles.

Ward teaches playing a set of recordings, wherein the set of recordings matches the profile associated with the selected personalized audio channel (Col 2 lines 18-25 and 46-60, Col 4 line 40 through Col 5 line 5, and Col 8 lines 20-40); and

modifying at least one of the two or more profiles in response to receiving user feedback (Col 2 lines 15-39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of dynamic profiles and playlists with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of providing a dynamic playlist which adapts to usage patterns and personal preferences (Col 1 lines 57-64).

Herz teaches transmitting a broadcast recording over a broadcast channel, wherein the step of transmitting the broadcast recording over the broadcast channel comprises transmitting the broadcast recording to a plurality of unspecified receivers simultaneously (Col. 4 lines 35-61), and modifying at least one of the one or more channel profiles in response to receiving user feedback regarding a broadcast recording (Col. 6 lines 38-57, Col 11 lines 1-32). It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to incorporate the use of broadcasting a recording to multiple unspecified receivers and modifying at least one of the channel profiles based on receiving user feedback regarding the broadcast recording with the prior art of Leeke. One of ordinary skill in the art would have done so for the purpose of establishing personalized virtual stations based on scheduled broadcast data (Abstract, Col 4 lines 35-43)

De Bonet teaches receiving an indication from the user that the user likes the received broadcast recording while the broadcast recording is being transmitted over the broadcast channel (Col 2 lines 18-21, Col 8 lines 24-26 and 37-40, Col 13 lines 50-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of receiving user feedback regarding a currently playing broadcast recording with the broadcast audio system of Leeke. One of ordinary skill in the art would have done so for the purpose of receiving timely user ratings of currently playing songs for use in collaborative filtering used to predict other songs which the particular user might enjoy (Col 13 lines 21-38 and 50-59).

Launchcast teaches a user interface to enable a user to select between personalized audio channels and receiving an indication that a user would like to utilize a selected one of the two or more personalized channels (Page 1 – see LAUNCHcast Stations). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of listing multiple personalized audio channels with the broadcast audio system of Leeke. One of ordinary skill in the art

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would have done so for the purpose of provided a quick and simple way to access multiple personalized stations (Page 1).

b. As per claims 13 and 28, Leeke additionally discloses the step of storing the broadcast recording in a cache of a receiver as the broadcast recording is being received (Col. 35 lines 48-59, Col 48 lines 38-47, Col 49 lines 12-21).

c. As per claim 14, Leeke additionally discloses providing means for enabling the user to provide an indication that the user would like to obtain a copy of the broadcast recording (Col 14 lines 40-42).

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leeke, Ward, Herz, De Bonet, and Launchcast in view of Mankovich.

a. As per claim 15 Leeke additionally discloses determining whether the user may obtain a copy of the broadcast recording in response to the user providing an indication that the user would like to obtain a copy of the broadcast recording (Col 23 lines 60-66, Col. 24 lines 15-16). However, Leeke fails to explicitly disclose copying a sound recording from a cache to a non-volatile storage medium if it is determined that the user may obtain a copy.

Mankovich teaches copying a sound recording from a cache to a non-volatile storage medium if it is determined that the user may obtain a copy (Para. 0030). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the use of transition from a cache to a non-volatile

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storage medium with network music playlist systems. One of ordinary skill in the art would have been motivated to do so for the purpose of allowing download of digital copies of content upon purchase request (Para. 0030).

Allowable Subject Matter

7. Claim 31 remains objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Regarding Applicant's arguments with respect to the prior art of Herz, Applicant argued that the prior art of Herz fails to teach modifying at least one of the one or more channel profiles in response to receiving the indication that the user likes the received broadcast recording [wherein the channel profile is used to select the recordings that are played for the personalized channel with which the channel profile is associated] as required by independent claim 1. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). With respect to the rejection of claim 1, the prior art of Herz was merely relied upon for the limitations of wherein the step of transmitting the broadcast recording over the broadcast channel comprises transmitting the broadcast

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recording to a plurality of unspecified receivers simultaneously and modifying at least one of the one or more channel profiles in response to receiving user feedback regarding a broadcast recording.

Applicant argued that the profile which is updated in the Herz system is a customer profile and not a channel profile. However, the prior art of Herz teaches that the customer profile is used to determine which programs will be displayed to the customer, and that the profile data is used to establish specific customer profile-based "virtual channels" for display via the specific customer set top multimedia terminal (e.g., at Col. 4 line 62 through Col. 5 line 25 and Col. 22 lines 54-67). As such, the customer profile is functionally equivalent to the channel profile as claimed, since the customer profile specifically determines "virtual channel" content. Accordingly, Applicant's argument is not found to be persuasive.

9. Regarding Applicant's arguments with respect to dependent claim 5, Applicant's argument directed to the prior art of Hempleman is found to be persuasive. However, upon further consideration, a new grounds of rejection has been presented with respect to the prior art of Ellis, as outlined above.

10. Regarding Applicant's arguments with respect to dependent claim 7, Applicant's argument directed to the prior art of Ward is found to be persuasive. However, upon further consideration, a new grounds of rejection has been presented with respect to the prior art of Herz, as outlined above.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GRANT FORD whose telephone number is (571)272-8630. The examiner can normally be reached on 8-5:30 Mon-Thurs alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571)272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. F./
Examiner, Art Unit 2442

/Shawki S Ismail/
Primary Examiner, Art Unit 2455